All Steel Iron Works, Inc. *and* Iron Workers Regional Local No. 853. Case 13–CA–261682

February 9, 2021

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS KAPLAN AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that All Steel Iron Works, Inc. (the Respondent) has withdrawn its answer to the complaint. Upon a charge filed by Iron Workers Regional Local No. 853 (the Union) on June 15, 2020, and amended on November 3, 2020, the General Counsel issued a complaint and notice of hearing on November 10, 2020, against the Respondent, alleging that it had violated Section 8(a)(5) and (1) of the Act. On November 24, 2020, the Respondent filed an answer to the complaint. On November 25, 2020, the General Counsel issued a first amended complaint and notice of hearing. On December 10, 2020, the Respondent filed a motion to withdraw its answer.[1]

On December 14, 2020, the General Counsel filed with the National Labor Relations Board a Motion to Transfer Proceedings to the Board and for Default Judgment. On December 16, 2020, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by November 24, 2020, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Although the Respondent filed an answer on November 24, 2020, it later withdrew that answer. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true.[2] Accordingly, based on the withdrawal of the Respondent's answer, we deem the allegations in the complaint to be admitted as true, and grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in Bedford Park, Illinois (the Respondent's facility), and has been engaged in the business of manufacturing steel products.

In conducting its business operations during the 12-month period ending on December 31, 2019, a representative period, Respondent purchased and received at its facility goods valued in excess of $50,000 directly from points outside of the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

1. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

John Kot	-	Owner and President
Pamela Kot	-	Chief Financial Officer (CFO)

2. The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time shop employees engaged in production and fabrication and all field employees engaged in erection and installation; but excluding all confidential employees, professional employees, clerical employees, managerial employees, guards and supervisors as defined by the Act.

3. On April 26, 2019, the Board certified the Union as the exclusive collective-bargaining representative of the unit.

4. At all material times since April 26, 2019, based on Section 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the unit.

[1] In its motion, the Respondent stated that it did not intend to file an answer to the General Counsel's November 25 first amended complaint because it does not "wish[ ] to the expend the funds necessary to defend this matter" and that it "does not intend to answer the Amended Complaint or any further pleadings in this matter."

[2] See *3H Service System, Inc.*, 369 NLRB No. 116 (2020); *Maislin Transport*, 274 NLRB 529 (1985).

5. About January 3, 2020, the Respondent, by email, informed the Union that the Respondent was closing its business effective January 31, 2020.

6. About January 3, 2020, the Respondent, by email to the Union, withdrew its recognition of the Union as the exclusive collective-bargaining representative of the unit effective January 31, 2020.

7. About February 28, 2020 and on numerous dates thereafter, the Union observed the Respondent continuing its operations at its facility as described above.

8. About May 4, 2020, the Union, by email, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

9. Since about May 4, 2020, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit.

10. Since about May 4, 2020, the Union has requested in writing that the Respondent furnish the Union with the following information:

(a) A list of all bargaining unit employees presently employed by the Company, including their names, addresses, phone numbers, hire dates and rates of pay.

(b) A list of subcontractors or independent contractors that presently perform bargaining unit work for the Company, including their names, addresses, phone numbers, hire dates, anticipated termination dates, and rates of pay.

(c) Also, if the Company has transferred any bargaining unit work to any of its other locations, please provide a description of the work that was transferred, the date the work was transferred, and the address of the location to where the work was transferred.

(d) Provide the date upon which the lease of the premises presently occupied by the Company at its location at 6620 S. Lorel Avenue expires. If the Company does not lease these premises, explain how the Company occupies these premises, if without a lease, does it own the property?

(e) If the Company will cease its operations, please provide the date upon which such action will take place.

11. Since about June 15, 2020, the Union requested in writing that the Respondent furnish the Union with the following information:

(a) All Small Business Association documents related to loans as part of "CARES Act" issued to or applied for by the following persons and/or entities: "All Steel Iron Works, Inc.," "John Kot," and "Pamela Kot." Additionally, provide all correspondence or applications to the Small Business Administration by entities using the following business address: 6620 S. Lorel Avenue, Chicago, IL 60638.

(b) Also, please provide the annual budget and profit and loss statements for 2019 and 2020. In addition, please provide 2019 business tax filings for All Steel Iron Works, Inc., as well as the balance sheet ending March 1, 2020. If the Company will cease its operations, please provide the date upon which such action will take place.

12. The information requested by the Union, as described above in paragraphs 11 and 12, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

13. Since about June 16, 2020, the Respondent, by John Kot, has failed and refused to furnish the Union with the information requested by it.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to recognize and bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

The Respondent's unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to bargain with the Union, we shall order the Respondent to recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees with respect to wages, hours, benefits, and other terms and conditions of employment and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with information that is relevant and necessary to its role as the exclusive collective bargaining representative of the unit employees, we shall order the

Respondent to provide the Union with the information it requested on May 4, and June 15, 2020.

ORDER

The National Labor Relations Board orders that the Respondent, All Steel Iron Works, Inc., Bedford Park, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain collectively and in good faith with Iron Workers Regional Local Union No. 853 (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time shop employees engaged in production and fabrication and all field employees engaged in erection and installation; but excluding all confidential employees, professional employees, clerical employees, managerial employees, guards and supervisors as defined by the Act.

(b) Furnish to the Union in a timely manner the information requested by the Union on May 4 and June 15, 2020.

(c) Post at its Bedford Park, Illinois facility copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 3, 2020.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C. February 9, 2021

Lauren McFerran, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

[3] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain collectively and in good faith with the Iron Workers Regional Local Union No. 853 (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time shop employees engaged in production and fabrication and all field employees engaged in erection and installation; but excluding all confidential employees, professional employees, clerical employees, managerial employees, guards and supervisors as defined by the Act.

WE WILL furnish to the Union in a timely manner the information it requested on May 4 and June 15, 2020.

ALL STEEL IRON WORKS, INC.

The Board's decision can be found at www.nlrb.gov/case/13-CA-261682 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.